SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,

Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Appellees.

On Appeal From the Court of the State of California, Second Appellate District.

Motion to Dismiss Appeal or, in the Alternative, to Affirm the Decision of the California Court of Appeal.

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Introduction.

Appellees, the City of Los Angeles and the Department of Water and Power of the City of Los Angeles, herewith respectfully move this Court to dismiss the appeal of Standard Oil Company of California on the ground that it does not present a substantial federal question. In the alternative, appellees move this Court to affirm the decision of the California Court of Appeal.

Analysis of the Statute Involved.

1. Purpose—Emergency Flood Relief Legislation.

The California statute involved (herein called Assembly Bill 9) is identified in Appellant's Jurisdictional Statement at page 3, and the full text of the statute is set forth at pages 44 to 48 of Appellant's Appendix. By its terms, Assembly Bill 9 was enacted as an emergency measure to afford disaster relief to the victims of a flood resulting from the failure of the Baldwin Hills Dam in the City of Los Angeles.

Section 10 of the Bill reads:

> "This Act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. Facts constituting such necessity are:
>
> "On December 14, 1963, a dam and reservoir, located in the Baldwin Hills area within the City of Los Angeles, failed and more than two hundred million gallons of water flooded hundreds of dwellings or commercial buildings, with more than 2,000 persons suffering severe damage to their property. The losses aggregated many millions of dollars and the County of Los Angeles has been declared by the President of the United States to be a disaster area.
>
> "The victims of the flood are in urgent need of funds to mitigate the hardships which they are suffering and to restore the damaged homes and business properties. The remedies provided by this Act are necessary to cope with this situation and must be available immediately."

2. The Legal Problem.

At the time of the Baldwin Hills Dam failure, the rule concerning contribution among joint tortfeasors was controlled by California Code of Civil Procedure Sections 875-880, the text of which appears in Appellants' Jurisdictional Statement at pages 49-51. Under Sections 875-880, contribution could be had among joint tortfeasors only after judgment. Therefore, the parties potentially liable for damages to the victims of the Baldwin Hills Dam disaster were reluctant to settle claims with disaster victims prior to judgment because doing so would deprive them of any potential right of contribution from co-tortfeasors. This would have resulted in protracted delay in settling claims with the flood victims. As stated by the trial court [Clk. Tr. p. 56]:

> "The determination of ultimate responsibility for injury and damages required detailed future investigation and scientific opinion. . . . It was obvious that in the ordinary course of events, the legal liability to property owners and injured parties would take many months, if not years, to determine in the ordinary litigation processes."

The resulting delay in payment of claims would have increased and prolonged the hardship and suffering of the flood disaster victims.

3. The Solution Afforded by Assembly Bill 9.

In recognition of the need for the immediate payment of funds to flood victims to relieve and mitigate hardship, the California Legislature enacted Assembly Bill 9 in order to permit any potential tortfeasor, including Appellant Standard Oil of California, to settle

and pay any dam disaster claimants prior to judgment without forfeiting any right of contribution against any other possible co-tortfeasor. In reliance upon this statute, Appellees, the City of Los Angeles and the Department of Water and Power of the City of Los Angeles, settled and paid claims of flood disaster victims in an amount exceeding twelve million dollars.

4. The Effect of Assembly Bill 9 on Defendants.

The sole effect of Assembly Bill 9 is to permit Appellees or any other potential tortfeasors involved in the Baldwin Hills flood disaster to pay injured claimants prior to judgment without forfeiting the right of contribution against any other possible tortfeasors.

Assembly Bill 9 does not adjudicate the rights of any parties. It does not determine the liability of any party for the Baldwin Hills Dam failure. It does not deprive any person of the right to a judicial determination of all issues affecting that person's liability. No person can be found liable as a tortfeasor (either joint or several) except after a trial on the merits as to all issues. In the event of such a trial, the substantive rules of tort liability, the rules of pleading and procedure, and the rules of evidence remain the same as before and are unaffected by Assembly Bill 9. The sole effect of Assembly Bill 9 is to permit a right of contribution in favor of any party who has settled and paid claims of flood victims prior to judgment.

Thus, contrary to Appellant's assertion, Assembly Bill 9 is not trial by legislature, it is not in the manner of the Bill of Attainder, and it does not deprive Appellant of any Constitutionally protected rights.

No Substantial Federal Question Is Presented for the Reason That No Constitutionally Protected Right of Defendant Standard Oil Company of California Has Been Impaired or Abridged.

As noted above, the only affect which Assembly Bill 9 has upon the rights of Appellant Standard Oil of California is that it permitted Appellees or any other potential tortfeasor involved in the Baldwin Hills Dam disaster, including Appellant, to make prompt payment of claims to flood disaster victims prior to a final adjudication without forfeiting any right of contribution against any person subsequently determined to be a joint-tortfeasor.

The California Supreme Court has held that a joint tortfeasor does not have a Constitutionally-protected, vested right to application of the contribution statutes as they existed at the time the tort was committed. Thus, in *Augustus v. Bean,* (1961) 56 Cal. 2d 270, 363 P. 2d 873, the California Supreme Court held that California Code of Civil Procedure Sections 875-880, which became effective on January 1, 1958, were applicable to a case in which the accident occurred in 1956, but the judgment determining liability did not occur until April of 1958. The California Supreme Court stated at 56 Cal. 2d 272:

> "Our construction of Section 880 does not give rise to a problem of retroactive impairment of a vested right as of the time of the accident a person did not have a vested right at common law to avoid paying for the consequences of his negligence merely because there were other tortfeasors involved. After the entry of a judgment against the tortfeasors, each of them was liable in full

until the judgment was satisfied, and, if the plaintiff chose to collect from one to the exclusion of another, this was a matter of chance rather than the result of a right which became fixed as of the time of the accident. Contribution statutes, if applied where an accident antedates their enactment, do not retroactively increase the liability existing at the time of the injury, but merely provide a method by which the liability of each of the tortfeasors may be limited to his pro rata share of the judgment. The argument that a vested right would be impaired has been rejected not only in the *Hudson* case (171 Cal.App.2d Supp. at p. 871) but also in decisions of other jurisdictions (citations)."

The foregoing rule is consistent with and does not offend Federal Constitutional principles as enunciated by this Court. "No one has a vested right in any given mode of procedure. . . ." (*Ex Parte Collett,* 337 U.S. 55, at 71.)

See also:

Denver & R.G.W.R. Co. v. Trainmen, 387 U.S. 556, 563;

Chase Securities Corp. v. Donaldson, 325 U.S. 304, 315-316.

No Substantial Federal Question Is Presented for the Further Reason That Assembly Bill 9 Does Not Violate the Bill of Attainder Clause of Article I of the Constitution.

In enacting Assembly Bill 9, the California Legislature made no legislative determinations of fact and in no way invaded or impaired the judicial function.

As noted above, Assembly Bill 9 made no findings of liability for the flood disaster, it made no findings of fact upon which the liability of any party could be predicated, it did not affect or alter any pending judicial action, and it did not alter or affect the substantive or procedural rules of law by which the tort liability of any party would be determined. Therefore, arguments based on the separation of powers and the Bill of Attainder Clause of Article I are lacking in merit. As stated in the decision of the California Court of Appeal:

> "Respondent contends that A.B. 9 is an unconstitutional attempt to exercise judicial powers. A.B. 9 makes no determination of fact against anyone nor does it adjudicate the rights or liabilities of any parties. Therefore, it is unlike the legislative acts considered in the cases relied upon by respondent. (*United States v. Brown,* 381 U.S. 437 [14 L.Ed.2d 484, 85 S.Ct. 1707]; *Taylor & Co. v. Place* [1856] 4 R.I. 324; *Traux-Praer Coal Co. v. Compensation Comr.,* 123 W.Va. 621 [17 S.E.2d 330].)"

The Appeal Should Be Dismissed or, in the Alternative, the Decision of the California Court of Appeal Should Be Affirmed for the Reason That Assembly Bill Does Not Violate the Equal Protection or Due Process Clauses of the Fourteenth Amendment.

It is the thrust of appellant's contention that Assembly Bill 8 violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment for the reason that it applies only to injuries to persons and property and wrongful deaths resulting from the Baldwin

Hills Dam disaster. It is submitted that appellant's contention is without merit.

There is no constitutional requirement which prohibits a State from applying different rules of procedure to different areas or situations as the facts may reasonably require or from enacting legislation applicable to a specific area or situation where immediate action is deemed necessary.

Thus, in *Salsberg v. Maryland,* 346 U.S. 545, this Court upheld a Maryland statute which admitted illegally seized evidence in certain misdemeanor prosecutions in some counties, but excluded such evidence in prosecutions of the same misdemeanors in other counties. This Court stated at pages 550 to 552:

> "The Equal Protection Clause relates to equality between persons as such rather than between areas. . . .
>
> "'[T]here is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt a civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the Equal Protection of the laws. . . . It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other

> classes in the same place and under like circumstances.' "

The foregoing principle was recently reaffirmed in *South Carolina v. Katzenbach,* 383 U.S. 301, in which this Court upheld the application of certain provisions of the Voting Rights Act of 1965, which confined certain remedies to a small number of states and political subdivisions. This Court held such an approach to be a permissible method of dealing with the problem of racial discrimination in voting, stating at 383 U.S. 328:

> "Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See *McGowan v. Maryland,* 366 U.S. 420, 427; *Salsberg v. Maryland,* 346 U.S. 545, 550-554."

See also:

> *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 489.

It is submitted that the foregoing principles apply to the present case. Assembly Bill 9 was enacted for the specific purpose of facilitating early settlement claims on behalf of the victims of the Baldwin Hills Dam disaster. The California Legislature specifically declared that enactment of the statute was necessary in order to mitigate the hardships suffered by the flood victims and to permit them to restore their damaged homes and business properties as speedily as possible.

The need for Assembly Bill 9 did not exist elsewhere, and the Equal Protection and Due Process Clauses of the Constitution did not require the California Legislature to make the remedies afforded by Assembly Bill 9 available throughout the State regardless of such need. Clearly, there is nothing invidious or arbitrary in the present legislative classification.

For this reason, cases cited by respondent involving racial discrimination (*McLaughlin v. Florida,* 379 U.S. 184 and *Bolling v. Sharpe,* 347 U.S. 497); discrimination in favor of native born citizens over naturalized citizens (*Schneider v. Risk,* 377 U.S. 163); distinctions granting legitimate children a claim for the wrongful death of their mother but denying a like cause of action in favor of illegitimate children (*Levy v. Louisiana,* 391 U.S. 68) and statutes depriving a mother of recovery from the wrongful death of her illegitimate child while granting her a cause of action for the death of a legitimate child (*Glona v. American Guarantee Co.,* 391 U.S. 73); and cases granting an arbitrary and continuing competitive business advantage in favor of one business enterprise over all of its competitors (*Moray v. Doud,* 354 U.S. 457) have no application here.

Conclusion.

For the reasons herein set forth, it is respectfully requested that the Appeal of Standard Oil of California be dismissed for the reason that no substantial Federal question is presented or, in the alternative, that the decision of the California Court of Appeal upholding the Constitutionality of Assembly Bill 9 be affirmed.

Respectfully submitted,

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